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SUPREME COURT OF THE UNITED STATES.

No. 218.

GEORGE R. SAMPSON & LEWIS W. TAPPAN, MERCHANTS, DOING BUSINESS UNDER THE STYLE AND FIRM OF SAMPSON & TAPPAN, PLAINTIFFS IN ERROR,

vs.

CHARLES H. PEASLEE, COLLECTOR OF CUSTOMS.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF MASSACHUSETTS.

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GIDEON, Print.

UNITED STATES OF AMERICA,
MASSACHUSETTS DISTRICT, *ss:*

At a Circuit Court of the United States for the first circuit, begun and holden at Boston, within and for the district of Massachusetts, on Wednesday, the fifteenth day of October, in the year of our Lord one thousand eight hundred and fifty-six.

Before the Honorable Benjamin R. Curtis, Associate Justice; Peleg Sprague, District Judge.

GEORGE R. SAMPSON and LEWIS W. TAPPAN, merchants and co-partners, doing business under the style and firm of Sampson & Tappan, both resident in Boston, and citizens of the United States, plt'ffs,
versus
CHARLES H. PEASLEE, collector of customs, a citizen of the United States, resident at Woburn, in the county of Middlesex, in the district of Massachusetts def'dt.

In a plea of the case, for that heretofore, to wit, on the twenty-seventh day of August, in the year eighteen hundred and fifty-five, the said defendant being indebted to the plaintiffs in the sum of twenty thousand dollars, demanded and received of the plaintiffs by the defendant, under color of a law of the United States for the collection of duties, (and by the plaintiffs paid under protest,) and before that time had and received by the defendant to the use of the plaintiffs, promised them to pay the same when he should be thereto afterwards requested; yet he has not paid the same, or any part thereof, though often requested, to the damage of the said plaintiffs, as they say, the sum of twenty thousand dollars.

This action was entered at the October term, A. D. 1855, of this court, when and where the parties appeared, by their respective attorneys, and thence the same was continued from term to term, until this present term; and now the said defendant comes and defends, &c., when, &c., and says that he never promised in manner and form as the plaintiffs have declared against him; and of this he puts himself upon the country, by B. F. Hallett, his attorney, and the plaintiffs do the like, by A. W. Griswold, their attorney. Issue being thus joined, the cause, after a full hearing, is committed to a jury, sworn according to law to try the same, who, after hearing all matters and things concerning the same, return their verdict therein upon oath, and say that the jury find that the defendant did promise in manner and form as the plaintiffs have declared against him, and assess damages in the sum of ten hundred and twenty-two dollars and seventy-five cents. It is therefore considered by the court, that the said George R. Sampson and

Lewis W. Tappan recover against the said Charles H. Peaslee the sum of ten hundred and twenty-two dollars and seventy-five cents damages, and costs of suit taxed at .

Upon the trial of the above entitled cause, after the evidence was closed on both sides, and before the issue was submitted to the jury, the plaintiffs filed their bill of exceptions, which was allowed by the court, and is in the words and figures following, to wit:

This was an action for money had and received, brought by the plt'ffs, merchants, of Boston, against the defendant, the collector of customs for the port of Boston, to recover $1,614 25, being the amount of duty exacted of, and paid by, the plt'ffs, on an importation of Manilla hemp, over and above the duty on the value declared on entry; and also the sum of $12,067 60, being the amount of additional duty of 20 per cent., exacted under the 8th section of the tariff of 1846, on the appraised value of one of the invoices, and the sum of $524 25 on the other invoice, alleged by plt'ffs to be a portion of said importation of hemp, amounting to the sum of $14,206 10, together with the interest thereon, alleged by the plt'ffs to have been illegally exacted of them by the defendant, in his capacity of collector aforesaid, in the manner and under the circumstances hereinafter stated; which said sums were by the plaintiffs paid, under protest duly made and signed.

Upon the trial of said cause before the court and jury empannelled to try the same, after issue joined, it appeared in evidence, among other things, that the plaintiffs, who are engaged in trade with China, Manilla and the East Indies, in March, 1854, wrote to their agent at Manilla, among other merchandise to purchase, and ship by the ship Telegraph, which the plaintiffs had chartered and dispatched from San Francisco to that port for a cargo, four thousand bales of Manilla hemp. That, in pursuance of these instructions of the plaintiffs, the plaintiffs' agent purchased the hemp; and the ship Telegraph, having arrived at Manilla, commenced taking in her cargo in the roadsted, somewhere from three to four miles from the shore, on the 23d June, 1854, from lighters, which is the usual and necessary course: each lighter's cargo receives a permit to leave and be laden from the custom-house before it leaves the shore; and the export duty to which, by law, said hemp is subject, on exportation, accrues, and becomes due and payable, when each lighter's cargo receives a permit and leaves for the vessel, below town; but where the shippers are in good credit, the customs allow the export duty to remain till the whole cargo is shipped or cleared. That on the 29th of June the whole cargo had received such permits, and been so sent to the ship in lighters, and was either in ship or alongside in lighters; and on the 30th of June it was all on board and under deck, and bill of lading signed for 2,520 bales of it; and on July 1st the hatches were caulked down at 12 o'clock and bill of lading signed for balance of the cargo, and in the afternoon the ship was cleared at the custom-house and ready for sea; but not having the wind, did not sail.

July the 2nd the ship did not leave, because the master objected to sailing on the Sabbath; but on Monday, July 3d, the ship went to sea.

It appeared that the cargo was purchased with Brown, Brothers & Co.'s credit, and paid for by bills on London, which, in negotiating, must be accompanied by the invoice and bill of lading; and that it is a frequent practice, at that port, where the amount of the shipment is large, to split up the invoices into two or more invoices, because of the difficulty in negotiating bills for a whole cargo, on account of their magnitude. That the Telegraph's cargo amounted to upwards of $95,000, (the hemp alone costing over $80,000;) and in conformity to said practice, and to enable the parties to negotiate the bills for the payment therefor, it was split into two invoices—one containing 2,520 bales hemp, with other merchandise, amounting to $58,772 69, dated June 30th, with bill of lading of even date therewith, and the other containing 1,528 bales and a quantity of loose hemp, amounting to $36,367 03, also dated June 30th, with bill of lading dated July 1st.

It also appeared that the overland mail from England arrived at Manilla on Sunday, July 2nd, carrying news of war with Russia, in consequence of which there was a sudden and material advance in the market price of hemp on Monday, the 3d of July.

Upon the arrival of the Telegraph at Boston, the plaintiffs entered her cargo, Oct. 13th, '54, a part for consumption and the residue in bond, each invoice being separately entered at the custom-house. The hemp thus entered was appraised by the U. S. appraisers at $11 per picul, excepting 80 bales red hemp and 218 $\frac{6}{10}\frac{2}{0}$ piculs loose, which were appraised at $10½ per picul.

And the merchant appraiser testified that he and the general appraiser were instructed by the Secretary of the Treasury, through the defendant, to take, and they did take, the day of the sailing of the vessel, which was Monday, July 3d, as the period of exportation, with reference to which the value should be appraised; and that they exercised no judgment as to what was the period of exportation; and, under the instructions aforesaid, they appraised and estimated the hemp at the said period; and it appeared that they estimated the same at the same price as the United States appraisers, as per their report, as follows:

M. M. C.	2,520 bales hemp, 5,040 piculs, *a* $11,	$55,440 00
Charges and commissions,		4,897 60
		$60,337 60
L. & A.	1,448 bales hemp, 2,896 piculs, *a* $11,	$31,856 00
C.	80 " " 160 "	
Loose,	218 $\frac{6}{10}\frac{2}{0}$	
	378 $\frac{6}{10}\frac{2}{0}$, *a* $10½,	3,969 00
Charges and commissions,		3,111 35
		$38,936 35

It also appeared from the returns, that their appraised value of the hemp, exceeded by ten per centum the value declared on the entry of

the 2,520 bales, but it did not exceed by ten per centum the value declared on the entry of the 1,528 bales, nor by ten per centum the value of the aggregate of the two invoices constituting, as the plaintiffs claimed, the importation of 4,000 bales. An additional duty of 20 p. c. was assessed on the said appraised value of the 2,520 bales, also on the charges and commissions.

It appeared that Manilla hemp comes in bales about twenty inches square by three feet in length, and pressed hard together, and covered with a matting, and then bound closely with rattan bands, passing around the bales at short distances apart.

The merchant appraiser testified, that the examination of the hemp was made in the manner following:

They cut slits in the matting around the bales of the hemp which were examined, so they could see different parts of the outside surface of the hemp, but they did not cut the rattan bands which hold the bale together, and which pass around the bale outside the matting, which would have enabled them to examine the interior of the bale, as they considered they were not justified in doing so, from the difficulty and labor of binding it together again.

The principal part of the matting round the bales was not removed or displaced at all, and the openings through said mattings, at and by means of said slits, disclosed but a small part of the main surface, and no attempt was made to part or open the hemp at said slits or elsewhere, for the purpose of seeing within the surface, except as aforesaid, and only the outside surface was anywhere seen in fact.

The merchant appraiser stated, that the examination he thus made was such as is usual in buying or selling the article.

Thereupon, the plaintiffs contended and moved the court to instruct the jury, that the appraisement was illegal and invalid, and insufficient to displace the value declared on entry, for the reason that the appraisers did not exercise their judgment and discretion in regard to the period of exportation, and testified that he did not feel at liberty to do so, but merely obeyed the instructions of the Secretary of the Treasury to take the date of the sailing of the vessel as the rule to guide him.

But the court refused so to instruct the jury, but did instruct them, that if the period so prescribed by the Secretary was the true period of exportation, the objection was untenable; and did further instruct the jury, that the date of the sailing of the vessel from the foreign port for her destination in the United States was the true period of exportation; to which ruling and instruction the plaintiffs excepted.

The plaintiffs contended and moved the court to instruct the jury, that, upon the facts proved, all the hemp so ordered and imported by the plaintiffs' ship so as aforesaid was to be taken to be one entire entry, for the purpose of declaring and appraising the value for the levy of duties.

But the court refused so to instruct the jury, but did rule and instruct them, that each entry was to be deemed and treated as a separate transaction for the purpose of appraisement, and the assessment of duties thereon. To which ruling and instructions the plaintiffs excepted.

The plaintiffs offered to prove, that hemp was of various qualities and values, and that it was and is impossible to determine the qualities of all the packages by such an examination as was testified to by the merchant appraiser; that, for the last three years or more, much of the Manilla hemp imported has been muzzled in the bale, and that it was impossible to determine whether it is so muzzled in the bale or not, without cutting the bands and removing all the matting, and opening the bale and examining the inside of it; that the outside of the bale sometimes appears to be and is good and current quality, while the interior may be filled with refuse or inferior quality; and that often it is so tangled or muzzled as to render the bale from ten to twenty per centum less value than if it were all of the same quality as the outside of the bale; that, besides being muzzled, there are usually three or more grades of hemp imported, differing in values from one to three cents per pound; and that, in order to determine of what proportion of each thereof the bale is composed, it is necessary to see and examine the inside of the bale; and that it is the custom of the trade to make allowance to the purchaser, of from one to three cents per pound, per bale, on all muzz'ed or inferior hemp found on opening it after purchase. But, that the examination made by the merchant appraiser was such as is usually made in buying or selling hemp.

But the court ruled, that if the examination made by the merchant appraiser was such as is usually made in buying or selling this article, and was satisfactory to the merchant appraiser, it was not open to the plaintiff to show that he adopted a mode of examination insufficient to detect fraudulent packing or diversities in the quality of the different parts of the bales of hemp. To which ruling and instructions the plaintiffs excepted; and the defendant also, before said issue was submitted to the jury, filed his bill of exceptions, which was duly allowed by the court, and is as follows, to wit:

In the trial of the above entitled cause, it further appearing by evidence, among other things, that the defendant, as collector of the port of Boston and Charlestown, had levied and assessed, and that the plaintiffs had paid, under protest, an additional duty of twenty per centum on the charges and commissions, as well as on the appraised value of merchandise imported by plaintiffs; the plaintiffs' counsel prayed the court to instruct the jury, that so much of the said additional duty as was levied on the charges and commissions was unauthorized by law. Which instruction was given, and the defendant, by his counsel, excepted thereto.

UNITED STATES OF AMERICA,
Massachusetts district, ss:

I, Henry W. Fuller, clerk of the circuit court of the United States for the first circuit, Massachusetts district, do hereby certify, that the foregoing is a true copy of the record, and of all proceedings in the

cause of George R. Sampson and al. vs. Charles H. Peaslee, in said court.

In testimony whereof, I have hereunto set my hand and the seal of the said court at Boston, in said district, this twenty-
[L. S.] eighth day of November, in the year of our Lord one thousand eight hundred and fifty-six, and of the independence of the United States of America the eighty-first.

H. W. FULLER, *Clerk.*

Citation.

UNITED STATES OF AMERICA,
Circuit Court of the U. S., Massachusetts district, ss:

[SEAL.] To Charles H. Peaslee, Collector of the Customs at the port of Boston, resident in Woburn, in said district, greeting:

You are hereby cited and admonished to appear before the chief justice and the associate justices of the Supreme Court of the United States, on the first Monday of December next, at Washington, being the present seat of the National Government, then and there to make answer to a writ of error this day sued out of the clerk's office of the circuit court of the United States, Massachusetts district, wherein George R. Sampson & Lewis W. Tappan, of Boston, in said district, citizens of said State of Massachusetts, merchants and co-partners, are plaintiffs, and you are defendant in error, to show cause, if any there be, why the judgment in said writ of error mentioned should not be corrected, and speedy justice done to the parties in that behalf.

Witness the Hon. Roger B. Taney, chief justice of the Supreme Court of the United States, this tenth day of November, A. D. one thousand eight hundred and fifty-six.

P. SPRAGUE,
Judge of the United States for the district Mass.

MASSACHUSETTS DISTRICT, *ss:*

BOSTON, *Nov'r 10th*, 1856.

I, Charles H. Peaslee, collector of the customs for the district of Boston and Charlestown, do hereby acknowledge that I have this day been served with a copy of this citation, and do hereby waive all further notice thereof and of the pendency of said writ of error, and request that my appearance in defence thereof may be entered in court.

CHARLES H. PEASLEE.

Know all men by these presents, that we, George R. Sampson & Lewis W. Tappan, of Boston, and Vernon H. Brown and A. L. Frothingham, of said Boston, as sureties, are holden and stand firmly bound and obliged unto Charles H. Peaslee, of Woburn, collector of the customs for the port of Boston, in the full and just sum of three hundred dollars, to be paid unto the said Charles H. Peaslee, his executors, admistrators, and assigns: To the which payment, well and

truly to be made, we bind ourselves, our heirs, executors, and administrators, firmly by these presents.

Witness our hands and seals, dated the tenth day of November, in the year of our Lord one thousand eight hundred and fifty-six.

The condition of this obligation is such, that whereas the said Sampson & Tappan have sued out a writ of error returnable before the chief justice and associate justices of the Supreme Court of the United States, at the next term of said court, to be holden at Washington, on the first Monday of December next, to correct a judgment rendered at the present term of the circuit court of the United States between them and said Peaslee: Now, if the said Sampson & Tappan shall prosecute their said writ of error with effect and answer all damages and costs, if they shall fail to make good their plea, then this bond is to be void; otherwise the same is to remain in full force and effect.

Signed and sealed the day and year first above written by us.

(Signed) GEO. R. SAMPSON, [SEAL.]
" LEWIS W. TAPPAN, [SEAL.]
" VERNON H. BROWN, [SEAL.]
" A. L. FROTHINGHAM. [SEAL.]

In presence of
WM. W. GANNETT.

Approved by the U. S. dist. att'y, Mass. dist.
(Signed) B. F. HALLETT.

CIR. COURT U. S., MASS. DIST.

A true copy. Attest:

H. W. FULLER, *Clerk.*

Writ of Error.

UNITED STATES, *ss:*

The President of the United States, to the Judges of the Circuit Court
[L. S.] holden in and for the district of Massachusetts, greeting:

Because, that in the record and process, and also in the rendering of judgment in a suit before you, or some of you, between George R. Sampson and Lewis W. Tappan, merchants, plaintiffs, and Charles H. Peaslee, collector of the port of Boston, defendant, in a plea of the case, a manifest error has intervened to the great damage of the said Sampson and Tappan, as in their complaint has been stated: And as it is just and proper that the error, if any there be, should be corrected in due manner, and that full and speedy justice should be done to the parties aforesaid in this behalf, you are hereby commanded, that, if judgment thereof be given, then under your seal, you do distinctly and openly send the record and process in the suit aforesaid, with all things concerning them, and this writ, so that you have the same before the chief justice and the associate justices of the Supreme Court of the United States, on the first Monday of December next, at Washington,